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**UNITED STATES DISTRICT COURT**

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**EASTERN DISTRICT OF TEXAS**

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MICHAEL ELLIOTT, #22228-078

*versus*

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:16-CV-621

CRIMINAL ACTION NO. 4:14-CR-11(01)

**ORDER OF DISMISSAL**

The above-styled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that Movant's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 should be denied. Movant has filed objections.

Movant is complaining about his sentence, and he attributes his erroneous sentence to ineffective assistance of counsel. The issue of whether the Presentence Investigation Report correctly calculated his range of punishment was fully addressed on appeal in a no-merit brief submitted by his attorney in accordance with *Anders v. California*, 386 U.S. 738 (1967). Counsel expressed the opinion that there were no errors in the sentence. Movant did not file a response showing that the Presentence Investigation Report contained errors. The United States Court of Appeals for the Fifth Circuit issued an opinion concurring with counsel's assessment that the appeal presented no nonfrivolous issue for appellate review, and the appeal was dismissed. *United States v. Elliott*, 653 F. App'x 272 (5th Cir. 2016).

In the present § 2255 motion and objections, Movant has not shown that the Presentence Investigation Report erroneously calculated his range of punishment. Moreover, he has not shown that his trial attorney's representation was deficient or that he was prejudiced by deficient

representation, as required by *Strickland v. Washington*, 466 U.S. 668, 688 (1984). He has not satisfied his burden of showing ineffective assistance of counsel.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Movant to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections of Movant are without merit.

It is accordingly **ORDERED** that the Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 is **DENIED**, and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled upon are **DENIED**.

**Signed this date**

**Aug 16, 2019**

A handwritten signature in black ink, reading "Marcia A. Crone", written in a cursive style.

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE